

TAPE #1297

UNAPPROVED DRAFT

**CITY COUNCIL MEETING MINUTES**

**JUNE 28, 1995**

The regular meeting of the City Council of the City of Bremerton was called to order in the City Council Chambers, 239 4th Street, Bremerton, Washington, Wednesday, June 28, 1995, at 5:30 P.M., with Council President Sherril Huff-Menees presiding. Council members present were Bob Winters, Morrie Dawkins, John Law, David Farr Richard Neville, and Lon Overson. Council members Al Colvin and Carlos Montgomery were absent. Also present were City Attorney Ian Sievers and City Clerk Kathy McCluskey.

The meeting opened with the Pledge of Allegiance led by Council President Huff-Menees and Invocation given by Pastor Shawn Ziemke of Abundant Life Foursquare Church.

**CONSENT AGENDA** - NONE

**CLAIMS/CHECK REGISTERS**

Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing that had been made available to the Council.

#0018 M/S/C/U(Overson/Neville) on June 28, 1995, the Council does approve for payment those vouchers included and further described as follows: 185853 through 185915 in the amount of \$259,117.71; and Retirees' Payroll for the period ending June 30, 1995, in the amount of \$87,210.92.

**President Huff-Menees** make the following announcements:

(1) City Council Study Session - July 10, 1995, 6:00 - 9:00 P.M., in the Council Conference Room. Topics to be discussed: Construction Project Update Report; Parks and Recreation Department Overview; Mid-year Budget Adjustment for Public Works and Utilities Department.

(2) Effective June 29 there will be a burn ban beginning at 11:59 P.M. on outdoor burning throughout the City of Bremerton in conjunction with the County-wide burn ban, with the only exception being barbecues.

(3) City Council Executive Session will be held immediately following this Council meeting to discuss a "personnel" matter.

**COUNCIL MEMBER REPORTS**

**Mr. Overson** reported a lot of activity was happening on the

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 2 of 19

boardwalk, Turner Joy, and the USS Missouri is also attracting a lot of interest. The old Elks Building is rapidly undergoing change on a daily basis. Because of the very hot weather, he cautioned parents to not leave children or animals in cars unattended.

Mr. Farr reminded everyone of the "free" annual Household Hazardous Waste Clean Up Collection - June 28 through July 1 at the Olympic College parking lot.

Mr. Law reported on Friday evening a serious accident occurred on Sheridan Road resulting in three people being transported by ambulance to the hospital, and involved the cooperations of Fire District #15 along with Bremerton's Fire Department. He cited this incident as a good example for the need for more Fire Department personnel and hoped funding could be found in the very near future to meet that need. He commended all Fire Department personnel and Police Department personnel for their part in giving assistance at the scene of the accident. The next District #3 Neighborhood Meeting is scheduled for July 18, 7:00 P.M. at the Senior Center, with the Fire Department On Parade. The program for the evening will include fire trucks, medical units, sprinkler demonstration, hands on fire extinguisher demonstrations, plus refreshments. This is an opportunity to bring children and grandchildren where they can learn about fires, the danger of fires and safety requirements.

Mr. Dawkins noted the burn ban will bring about a slow down of the new golf course construction project.

Mr. Winters reported the recent Kitsap Lake Neighborhood meeting was very productive. He thanked both City and County residents attending that meeting where issues relating to the users of the lake were discussed. He found Travis Baker's newspaper article addressing that meeting to be quite accurate. He thanked his long time friend and neighbor Mel Wortman, Police Chief Du Fresne and Captain Rodgers for attending that meeting and answering questions regarding City ordinances and enforcement. He felt strongly that people need to be educated and communicate on the water keeping in mind "water safety". He cautioned everyone to be safe and sane over the 4th of July.

Mrs. Huff-Menees reminded families with children at home this summer that the Parks and Recreation Department has a variety of summer programs for different age groups as well as the Playground Express that travels to the various parks.

#### MAYOR'S REPORT

Mayor Lynn Horton presented a Certificate of Appreciation to Mary Sump on behalf of the City of Bremerton for her dedicated effort to

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 3 of 19

revitalize the Anderson Cove area. Mary obtained free services from Brem-Air Disposal for garbage collection, tire recycling, metal and appliance recycling as well as refreshments for the volunteers involved in the weekend clean up event. Mayor Horton wished there were more people like Mary willing to get involved helping to make the City a better place to live. Lastly, she hoped everyone would have a safe 4th of July holiday.

**PUBLIC RECOGNITION**

**Gordy Byrd** reported his absence from City Council meetings for several weeks was due to his experiencing some physical difficulties. He is getting involved with a group called World Wide Dream Builders, which is a corporation that helps people fulfill their dreams. He hopes that this new endeavor will become the sole support of the Byrd's Nest within three to five years. He wished everyone a happy 4th of July.

**Brian Lightbody**, Oyster Bay Avenue, stated at the Citizens Involvement meeting a couple months ago Mayor Horton talked about the possible condemnation of properties within his neighborhood, which would later be sold for commercial use. He understood the condemnation process was only for "public use" and could not see how selling property for "commercial use" can be considered a public use. He believed it was stealing property and making a profit. At that same meeting he heard people talking about their water bills going up 6-8%. He reviewed his water bills a year prior to the Westhills lawsuit until the year after, and his bill went up 60%. He feels like the City is not only planning on taking their homes for no reason, but also making them pay for it in that area. In spite of many experts' assurances that the odor control project will eliminate the odor problem, the Mayor and City Council, based on their refusal to stop the rumors and to stop this process and deal with the situation, obviously have no confidence in this project. He wanted to know the source of money to pay for the plant upgrades as well as acquisition of properties. At the previous Council meeting, President Huff-Menees announced there was nothing Council could do because no formal proposal has been brought before them. He personally felt that was a copout. He asked can't this Council do anything themselves or just sit back and rubber stamp every bad idea the Mayor puts forth that sounds like it will make the City money? The threat of condemnation has made it difficult to sell any home in his neighborhood. By the lack of action on Council's part, they have allowed the Mayor to hold these residents hostage in their own homes. He no longer feels that Bremerton is a good place to live and does not want anything to do with it at any cost.

**Al Duke**, Assistant Fire Chief, reminded everyone that fireworks stands opened at 12:00 noon today. Fireworks are not allowed to be

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 4 of 19

discharged except on July 4th from 11:00 A.M. to 11:00 P.M. He hopes everyone watches over their children and animals over the 4th of July holiday. And, due to the dry weather more Fire Department personnel will be on duty the 4th of July.

Police Chief Paul Du Fresne also cautioned everyone to be extra careful because injuries during this time of year can be especially tragic. Everyone in the public safety services are concerned about the safety and welfare of the public. He displayed a map showing the designated "beat system" with specific Police Officers assigned to specific areas. He talked about the volume of calls for police service and assured the public the officers will respond as quickly as they can, and there may be times when they will have to be patient until the officer can reach them. So far the "beat system" is working well and they are looking at ways to improve it and make it fit.

Lynn Elliott, 1207 Oyster Bay Avenue South, spoke again about how the possible condemnation of property near the sewage treatment plant could affect her family. As Mr. Lightbody stated, they are starting to feel like they are being held hostage. She looked into refinancing her home at a lower interest rate, which would have been great for them. However, refinancing does cost money and they could not make a decision to spend the dollars not knowing what their future holds in that neighborhood. This situation has caused her great concern over teaching her children to have respect for government when they are seeing their own family and own home being torn apart by this government process. They have continued to water their lawn, in spite of the water bill, and worked on their landscape this past week and have experienced no bad odors coming from the sewer treatment plant. Her husband has encountered offensive odors when driving down the freeway towards Gorst, and she has noticed bad sewer odors in other parts of the City. She hopes this issue will be addressed soon and that they are contacted in some form or another. She has not been contacted by anyone and their lives are revolving on "rumors", which is very stressful. The stress she is feeling is affecting her health. The final determination made in their household is if their home is condemned, despite the fact her husband is in the military, they will choose any other place than Bremerton to live, schools to attend or support local businesses.

Ian Sievers stated Mayor Horton asked him to announce the Agenda Bill has been prepared for the condemnation and will be scheduled for the July 5 Council meeting. President Huff-Menees stated it was her hope that if the item was on the next week's Agenda that the affected property owners will have been contacted by that time. Mr. Lightbody asked if Council would be holding a Study Session on the issue of condemnation, allowing them to hear what the

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 5 of 19

administration had to say and give their input at that time? Mr. Sievers explained the condemnation action will require an ordinance, which will provide for two public hearings before the ordinance is passed. Mr. Lightbody expressed concern that there wouldn't be any opportunity for public input prior to Council voting on the issue. Mr. Sievers emphasized the ordinance will require two readings and the public will have an opportunity to give input during both of those readings prior to a final vote.

**7A - CONTRACT EXTENSION FOR SAFE STREETS PROGRAM, #AB95-139**

Henry Mincey has administered the Safe Streets Program for the City since its inception in August 1993. The contract for Mr. Mincey's services expired on June 30. This contract amendment extends the term through December 31, 1995 with all other terms and conditions remaining the same. The extended contract can be accommodated within the current budget of the Police Department.

Mayor Lynn Horton stated since its inception the Safe Street Program has been very beneficial to the City of Bremerton as well as Kitsap County. Mr. Mincey's territory is broader than just city limits and as such the County has been asked for financial assistance to defray some of the cost of the contract extension. Mr. Mincey has done a great deal of work interfacing with the community and trying to bring community awareness to the issue of gang involvement and the world of drugs. She urged Council to extend this contract through the end of 1995.

Public comment - none.

Mr. Neville commented on Mr. Mincey's ability and the work he has done, which is truly astounding, getting the youth as well as the older generation to work together to reach common goals. The accomplishments achieved over the past 12 months have shown constant improvement. Mr. Neville's son and his friends have come in contact with Mr. Mincey and walked away impressed with how he relates to youth and gets the job done. He wholeheartedly supports extending this contract.

Mr. Winters asked Mr. Mincey to explain what has happened in the preventative mode of gang related activities. Henry Mincey stated when looking at prevention you are not looking at one particular source, i.e., police, schools, etc., and it is basically citizen driven. By that he means citizens, parents, youth themselves have to feel they are a part of a community and once that attitude is developed people begin to see they have a stake in it. If they have a stake, they are not as willing to destroy. It also means talking with others, who may have different ideas, but being able to come to an understanding. A lot of things that happen with young people, especially around gang activity is deplorable. But,

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 6 of 19

if you understand the dynamics and risk factors of the issues that people try to address, poverty being one of them, the ability to make some kind of an income, even if it is illegal, can be understood. With that understanding, effort must be made to try to enforce and reinforce a belief in people that you can do legitimate activities and you can be part of a group without being destructive to your community. Basically, that means working with every component of the community that allows that to take place, such as talking with a group of youngsters, parents, or working with neighborhood organizations that are fed up with the anti-social behavior, graffiti or drug house activity. The intent is to help citizens work with the Police Department, other City departments or other resources to address those issues collectively rather than just placing that responsibility on the Police, schools, church or any one individual. Mr. Winters noted he often keeps a copy of Mr. Mincey's work report, which allows him to follow Mr. Mincey's agenda and how many people he reaches on a daily basis. He has been impressed with Mr. Mincey's accomplishments and wholeheartedly supports the Safe Streets program.

#0943 M/S/C/U(Overson/Winters) to authorize the Mayor to sign the proposed contract extension.

Mayor Horton stated a lot of help is received from local schools, community members and other organizations. But, the City's Drug and Gang Unit have been very instrumental in keeping a lid on things and the D.A.R.E. and new G.R.E.A.T programs are tools that help in the fight against the gang issue and drug usage in the community. While there has been a lot of talk in the greater community about the D.A.R.E. program being pulled out of County schools, she emphasized that she, Chief Du Frense and Mr. Mincey are committed to the D.A.R.E. and G.R.E.A.T programs. Statistics can do a lot of things depending on what one wants them to do, but the D.A.R.E. and now the G.R.E.A.T. program go beyond just the statistics of whether or not they are really successful in terms of drug usage and gang involvement later on. She sees them as invaluable tools to show kids good quality role models at young ages so that they don't need to fear Police officers and look at them as helping them with their problems. We have gotten away from integrating Police Officers with youth as part of every day community living. New and modern age stuff isn't necessarily better and she believes getting back to the basics of having the Police involved with our young people, not just at one point in their life, but on a continuing basis and something we need to return to. She is very committed to continuing those programs even if funding becomes an issue.

**7B - APPOINTMENT OF MARY SUMP TO THE PARKS & RECREATION COMMISSION,**  
**#AB95-140**

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 7 of 19

There is a vacancy on the Parks & Recreation Commission. It is recommended by the Mayor the position be filled by Mary Sump.

Mayor Lynn Horton reported Mary has been very visible in the community over the past few months in her quest for a playground for children in the Anderson Cove area. She believes Mary will bring a added perspective and refreshing point of view to the Parks Commission, as well as bringing some lively debates on park issues. She urged Council to confirm Mary Sump's appointment to the Parks Commission.

Public comment - none.

Mr. Farr added his enthusiasm to the appointment of Mary to the Parks Commission. Mary lives in District #6 and he has worked with her on several projects. He also believes Mary will be an advocate for little children and meeting their needs within the community so that they are not left out in planning for recreation needs.

#1123 M/S/C/U(Farr/Winters) to confirm the appointment of Mary Sump to the Parks & Recreation Commission.

Mary Sump stated she supports the idea that the old Hadden School site should be acquired by the City to be used as park land. She has already called the School District and asked that they have a representative at the next Anderson Cover Neighborhood meeting on July 10, 7:00 P.M., to give a status report on the Haddon site. She believes any vacant lot not currently in use should be used as play areas for children. She challenged those Anderson Cove residents that have not become active in their neighborhood group to come out to their next meeting and to reserve any judgement about them until they have met them. In closing, she thanked the Mayor and City Council for appointing her to the Parks Commission.

**7C - PENDERGAST REGIONAL SPORTS COMPLEX--PHASE I, KASSEL CONSTRUCTION, INC., -- CHANGE ORDER NO. 8, #AB95-141**

This Change Order includes several items that provide the Parks & Recreation Department the necessary refinement, functionability for maintenance, manageability and usage, as well as provides flexibility to add future improvements as deemed necessary within the known budgetary constraints. The additive cost for this final Change Order is \$27,053.56.

This Change Order shall be considered to be the final change order to Kassel Construction, Inc.'s contract, and sufficient budgetary resources will support this expenditure.

Dan Miller, Project Manager, emphasized this is the final change order for Kassel Construction as well as the final change order for Pendergast Regional Sports Complex construction project. There is sufficient budgetary resources to support this expenditure.

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 8 of 19

Public Comment - none.

Mr. Dawkins asked if everything was in place for the grand opening of the new facility? Mr. Miller stated yes, the Parks Department is putting all the amenities together for the grand opening.

Mr. Dawkins asked the size of the scoreboard? Mr. Miller stated the supports for the scoreboard have been set and the scoreboard itself will be set in place after the 4th of July. The scoreboard is large and should be the eye catcher as one enters the park. He emphasized the major contributors to this project include: Chuck Haselwood, Rotary Club, Kitsap Physician Service, Ace Paving, Belfair Sand & Gravel, Parametrix, plus a cast of many that will not only be named on a plaque, but will be out at the park. When he looks at this new facility he sees a monument that will withstand and be used by people beyond his time and long into the future.

#1351 M/S/C/U(Overson/Farr) to authorize and direct the Mayor to approve Change Order No. 8 in the amount of \$27,053.56 and make payment to Kassel Construction, Inc.

Mr. Miller thanked Mayor Horton for her affording him the opportunity to represent the Parks and Recreation on building this magnificent park, and he is looking forward to the construction of Phase II once funding is secured. Mr. Winters pointed out Phase I of the project was also constructed within budget.

8A - ORDINANCE NO. 4516 (SECOND READING) AMENDING THE 1995 BUDGET (BUDGET ADJUSTMENTS 1 THROUGH 23), #AB95-136  
Public comment - none.

#1397 M/S/C/U(Neville/Farr) to pass Ordinance No. 4516, on second reading, amending Ordinance No. 4495 relating to the budget of the City of Bremerton for Fiscal Year 1995.

9A - PUBLIC HEARING: APPEAL OF PLANNING COMMISSION DECISION TO UPHOLD THE PLANNING DIRECTOR'S DECISION TO ISSUE A 'CEASE AND DESIST ORDER' FOR AN ILLEGAL "JUNKYARD" LAND USE IN THE "BUSINESS PARK" (BP) ZONE; APPELLANT: WILLIAM SESKO; LOCATION: 1701 PENNSYLVANIA AVENUE, #AB95-142

The CEASE and DESIST ORDER was issued in response to apparent illegal use of the subject property as a junkyard. The Order was appealed and upheld by the Planning Commission. The City Council is the hearing body for appeals of Planning Commission decisions.

When hearing an appeal, the City Council may take any of the following actions:

1. Uphold the Planning Commission's decision, validating the CEASE and DESIST ORDER;



TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 9 of 19

2. Overturn the decision, invalidating the ORDER;
3. Modify the decision by adding or deleting conditions; or
4. Remand the decision back to the Planning Commission for further review of circumstances or impacts identified by the City Council (the Council should include specific issues to be considered).

President Huff-Menees asked the "Appearance Of Fairness/Conflict Of Interest" question. Mr. Dawkins stated he talked with Mrs. Sesko, however he thought he was discussing the Pearl's Pavilion area and his only comment was that they perhaps needed an attorney. Note: no one objected to Mr. Dawkins being seated; therefore, all Council members were seated.

Shane Jensen, Land Use Planner and Zoning Enforcement for the Department Of Community Development, referenced his memo dated June 20, 1995, which was included in the Agenda packet, that outlined the proper Zoning Enforcement Appeal Hearing Procedure.

Actions on the property today included: (1) CEASE & DESIST ORDER issued on February 2, 1995, and Mr. Sesko appealed that order to the Planning Commission. The Planning Commission heard the appeal on April 18, 1995, where they upheld the Director's decision to issue this order and deemed the subject property was being used as a junkyard based on the evidence they reviewed. This order has been appealed to the City Council and they will be shown evidence by photograph and video tape. There are a number of pictures showing shoreline violations, but they are not at issue during this hearing. The only issue to be addressed at this time is the zoning definition of a JUNKYARD. Any zoning violations are under another appeal that may or may not come before the City Council in the future.

William Sesko stated he and his wife, Natasha, are the owners of the subject property. He is an Engineer and as such he wanted to explain how he uses materials to create things. He then handed out some documentation to show his using various materials as part of his business of invention development. Mr. Overson raised a procedural point...in the past Council had discussed what information can be provided at one of these hearing. The discussion revolved mostly around that no additional information can be provided that was not provided to the Planning Commission. He asked the City Attorney if that was still true? Ian Sievers, City Attorney, stated yes. Mr. Overson stated then on that basis he needed some way to validate that the information just passed out to Council was also provided to the Planning Commission. Mr. Sievers stated he was not present during the Planning Commission hearing and Council would have to rely on Planning staff to verify whether or not that information was provided to the Planning

Commissioners. Mr. Jensen stated he could not recall whether or not the information Mr. Sesko handed out to Council was presented to the Planning Commission. Mr. Sesko stated he provided the Planning Commissioners some background on his profession. Mr. Overson pointed out it was difficult for the City Council to try to absorb any information handed out during the time allotted, and was not sure how useful such information would be to them. He asked if Mr. Sesko understood that he was not to provide Council any technical information that was not provided to the Planning Commission? Mr. Sesko stated there is a certain discovery if it wasn't discovered before that time. Mr. Sievers read into the record a section out of Council's Policy and Procedures Manual relating to this point: "Factual information, displays, drawings or pictures not presented at a hearing before a recommending board or commission may be restricted unless good cause for delay in presentation is shown. Council may ask questions of those testifying." He emphasized that statement would set the standard for this hearing and Council would have to rely on Mr. Sesko's good faith of compliance with that rule. Mr. Sesko stated all he was asking for was a fair hearing. Mr. Overson explained how Council came to adopt that rule and if more information is presented to Council their only option is to remand the issue back to the Planning Commission to consider the new information. Mr. Sesko stated he felt such action would be fair. However, he did not feel the information handed out to Council was "new" information, but may have been presented a little different to the Planning Commission. He emphasized all of his exhibits were returned to him following the Planning Commission meeting, but he did not have a formal listing identifying them.

Mr. Sesko handed out a copy of a letter from the Department Of Ecology dated September 23, 1994, stating they added the subject property to their data base as a site suspected to be contaminated by hazardous substances and conducting a remedial clean up action is not an admission of guilt or liability. He also submitted a sample of contamination materials that was found at the site and since that time test were made to determine its composition. The history of the site included it being adjacent to a coal gassification plant that provided coal gas throughout the City for heat. When the plant was decommissioned, apparently a lot of the coal material was pushed over the bank and with erosion of the bank it was causing this material to leach into the water and the beach was almost dead. He has put in considerable effort to clean up the beach in the hopes of bringing back marine and plant life. He thought he was doing a good deed in cleaning up the beach area. He passed out a copy of a letter from the Department Of Public Works stating that he had various items in the roadway. As soon as he received that letter, he removed the items. While he was cleaning up the property and removing the gas lines that were coming from

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 11 of 19

the coal dock to the surrounding area, the City put a STOP WORK order on the project, which he in turn applied for a Building Permit on October 21, 1994, however, he was told it was not acceptable.

Mr. Sesko is trying to establish the fact that the property has always been used for storage, which he believes is a legal non-conforming use. He could not understand why this could not be called "outdoor storage"...that definition says any material, including items for storage or sale, lease, processing or repair, including vehicles, not in an enclosed structure. He asked if there was a reason it could not be considered "outdoor storage?" Mr. Jensen stated the definition of outdoor storage was not used because it was defined by the Director Of Community Development as being a "junkyard". The materials stored on site were garbage, debris, other unused items that he felt fit this definition and were being stored or otherwise handled on the property. Mr. Sesko stated he believed it could be considered a storage area also. Mr. Overson pointed out that was not an allowed use in that area. Mr. Sesko stated he was not saying it was, but that it was a non-conforming use that was legally established. He asked the City Attorney if he was restricted from using case law during this hearing? Mr. Seivers stated that is not a factual matter, but rather part of his argument and would be allowed. Mr. Sesko handed out a copy of case law addressing "Construction of regulations that constitutes a junkyard - a collection of old airplanes and other articles are not junk simply because a uninformed observer may regard it as such. A person who maintains 14 unlicensed cars on his land for non-commercial purposes is not required to obtain a Junkyard License. Even though a storage yard is not an appropriate use for a Business Park zone, it is a non-conforming use.

Mr. Sesko passed out an aerial view of the subject project taken in 1986, which was prior to the current Zoning Ordinance, as well as an aerial view since he cleaned up the bank area. He also had pictures showing various kinds of materials he cleared from the bank and beach areas. He also passed by the Council members a Warranty Deed that showed the City owned the subject property in 1944, when it was deeded to Lent. He also passed out a lease that showed he was leasing the property prior to purchasing it from Paul McConkey for storage. He provided photographs of a City owned property in a residential zone that was being used for outdoor storage (former Street Department site adjacent to Evergreen Park), and he felt the uses were somewhat equal to his property.

Natasha Sesko, wife of William Sesko and president of the Chinese Cultural Association, stated the subject site is not a junkyard and she did not know why a CEASE and DESIST ORDER was issued. Before they actually purchased the property they leased it from Paul

McConkey to store items. After they purchased the property, they decided to clean it up because of the oozing materials they found on the site that was leaching into the Port Washington Narrows.

Mr. Jensen handed out some photographs that were taken of the site and were entered into evidence at the Planning Commission hearing. He apologized for the items handed out by Mr. Sesko that inadvertently did not get entered into evidence at the Planning Commission hearing. The pictures showed the shore line as well as additional items being stored. He referenced the definition of a Business Park Zone as follows: "The Business Park Zoning District is intended to provide opportunities for the development of low-intensity commercial, office or manufacturing businesses that are clean, quiet, low-traffic generators, and that will be compatible with adjacent or nearby residential uses or other uses that may be sensitive to business impacts. business Parks and their individual development will be designed as well-landscaped campus-like environments." He emphasized this is not an industrial area nor an industrial park area and the junkyard use has simply not been allowed there. Mr. Sesko's argument about a non-conforming use is one that the burden of proof is on him to establish. He read into the record the definition of a non-conforming use: "An activity or condition, which is legally established prior to the effective date of this ordinance (which is 1988), or subsequent amendments which would not be permitted out right or as an accessory use under this ordinance and is not specifically listed as being permitted by Special Use Permit, Planned Unit Development or other special permitting process. A non-conforming use may or may not involve buildings or structures and may involve part or all of the building or property. A party asserting the existence of a lawful non-conforming use has the burden of establishing as of the effective date of the Zoning Ordinance or subsequent amendments, the use is either consistent with zoning provisions or was a pre-existing legal non-conforming use." Mr. Jensen went on to say Mr. Pratt's determination was that if Mr. Sesko's property was a legal non-conforming use either as a junkyard or storage, that it is upon him to show the City how and why that was done. There is no evidence of the following: licensing for business or land use permits for the property. Mr. Pratt's interpretation was that even if that non-conforming use existed on the property it is not to be expanded and should be within a defined area and any expansion of that is in violation of the Zoning Code. Since no evidence has been received from Mr. Sesko to prove that scenario, the Planning Department has gone on the assumption that this is not a legal use nor does a legal non-conforming use exist. The intent of the zoning currently in place is that eventually non-conforming uses go away and the area is transformed into something that the City envisions for that area. Mr. Sesko has been called into the Planning Department on several occasions to talk about different shoreline uses on the

property, i.e., marina, marine research facility. But, the City has not received any permit applications to move forward on any of those ideas. Mr. Sesko handed out, for Council's viewing, a building permit that he had applied for, however, the City did not honor that application because there had not been any land use permitting done first.

Mr. Jensen concluded his presentation with a video of the subject site showing the kinds of things currently being stored on the site: vehicles, buses, trucks, boats, house structure on the back of a truck, construction equipment, piping, metal debris, concrete blocks, storage tanks, wood and metal pieces, tires, signs, pieces of a wall, pallets, a building set on sled runners.

Mr. Neville asked if the entire site was contained within the chain link fencing as shown on the video and the height of the fence? Mr. Jensen stated yes, on both sides; and the fence is approximately six feet tall.

Mr. Winters asked if a building permit was obtained to place a building on the site? Mr. Jensen stated no.

Mr. Law stated one of the handouts given to Council by Mr. Sesko was Section 135 citing case law. He asked if that information was presented to the Planning Commission? Mr. Jensen stated he could not recall if it was presented at that hearing. Mr. Sesko responded the City Attorney stated he could use that information during this hearing. Mr. Law asked that information would come under the category of "new information?" Mr. Sievers stated he believed the intent of Council's policy is not to be presented with new facts. He believed Mr. Sesko could make a variety of arguments by using the injection of case law to argue the definition of a junkyard. Mr. Law stated if citing case law is allowed, then Council would have to ask Mr. Sievers if such information would have affected the Planning Commission's decision. Mr. Sievers stated it could affect Council's decision if they felt such information made a difference. Mr. Law asked the City Attorney if they must first make sure that any thing cited would not change the Planning Commission's recommendation? Mr. Sievers stated it is basically a factual determination of a number of facts, i.e., is it a non-conforming use, when was it established, what was the zoning when it was established and find out if it was legal when it was established. And, then it is a definition of what is going on now and does it fit the definition of a junkyard, which is the non-conforming use alleged in the CEASE AND DESIST ORDER. There is legal interpretation on terms like "non-conforming use" and Mr. Sesko cited a couple of court opinions of the definition of a junkyard. He believes the essence of those mean that it has to somehow be related to commercial activity. Given the facts that

TAPE #1297  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 14 of 19

Council has heard, which should be approximately the same as the Planning Commission, he felt they could take that court's opinion as part of Mr. Sesko's argument. One of those cases stated it had to be commercial in nature, not personal.

**Public comment in support of the appeal:**

**Leonard Hastings** stated he has helped Mr. Sesko clean up the subject property even before Mr. Sesko purchased it. He did not see any difference between the subject site and the other adjoining properties. He believes the Planning Department is picking on this particular property when other properties around it look the same, which he would describe as industrial storage.

TAPE #1298

**Public comment in general:**

**LeRoy Adams** asked what kind of materials are stored on the site and what will it be used for? **Mr. Sesko** stated he invents things for a living and most of the material on the property that is of a chunky nature was there at the time he purchased the site, i.e., concrete floats, forms, platforms, pallets, etc., and he is cleaning out a lot of those materials. He has spent extensive amounts of time cleaning up debris along the bank area so that it would not leach or migrate into the water, which he viewed as making progress on his clean up efforts. **Mr. Adams** asked if Mr. Sesko had a business located on the property? **Mr. Sesko** stated he would like to locate a business on the site once it is cleaned up and the environmental people tell him how much that clean up will involve. He believes there is approximately 2,000 cubic yards of contaminated soil in the subject area and a lot of his clean up work has been to contain it from getting into the saltwater and evaluate what has to be done. **Mr. Adams** asked how long Mr. Sesko had owned the property and what has he done to make it less of an eyesore to the City? **Mr. Sesko** stated he had already moved a tremendous amount of things off the property. He referenced the two aerial photographs he passed around showing the site in 1986 and one showing as it exists today.

**Mayor Lynn Horton** stated Mr. Sesko made a comment that some of the material has been on the property for many years. Past administrations have not felt as strongly as she does in her administration that we need to clean up properties like this and try to restore them in some good assemblance to the neighborhood. This site is surrounded by a residential neighborhood and people living across the street from this site and those who drive by it every day. She has a real focus that we need to take care of our properties and making them habitable for our community. One of our highest priorities need to be cleaning up our community and making it a presentable place to live and have businesses.

Mr. Jensen read into the record comments received from Bill Radford, who works for Lee Fabricators: "Mr. Sesko has brought in concrete chunks, big tanks, leaky boats, junk piers and created a road to the beach without a permit." And, comments received from Rhonda and George Gage, 1558 Pennsylvania Avenue: "We live near the Sesko property and are concerned about the way this land is being used. These are our concerns: (1) the collection of old cars and buses, which are unsightly and inappropriate we feel in an area close to residential housing. These items just sit there. (2) The collection of an old barge and storage tanks on the tideland area, sometimes water sometimes beach. The beach has rust on it from the barge. (3) The cutting of vegetation in City right-of-way at the end of the road, Pennsylvania Avenue, and other cutting of vegetation especially trees, which we feel will result in weakening the bank and causing additional slides off the bank. Two slides off the bank in that area have occurred in recent years. (3) The mobile building moved in over the old junk tank area combined with the old junk vehicles seem like an attractive nuisance and dangerous. There are many children that live at the marina and in the neighborhood. The area is fenced, but the gates are sometimes open."

Mr. Sesko stated the site was zoned Industrial before it was zoned Business Park by the City. It is his burden to prove the property was never used for storage before when it always has been. The City has records of prior use of the site when it was owned by Lentz and other numerous activities. He again referenced the aerial photograph dated 1986, however, he was not sure he proved the point that it was actually taken during that year, but it does show the use as an industrial area, which was extensive storage. Now the property is being used for storage and he is cleaning it up and eventually would like to see it changed as soon as the contamination is cleaned up. He referenced the photograph of the City's property that appears to being used as storage by Park Avenue, and pointed out it is located next to a City park and residential properties across the street. He believed the materials stored on that site were not any more extensive than the materials he is storing on his property. His property is surrounded by industrial uses even though it is in a Business Park zone. The tank farm to the east of his property is an industrial use, the float manufacturer and concrete manufacturer to the west of the site are also industrial. He noted Lee's Fabrication shop and a vehicle maintenance shop for the fuel oil company to the south of his property are completely surrounded by industrial use. Now for the City to say that all he can do on his site is "Business Park" use doesn't make a lot of sense to him. He asked what will it take for him to prove that his property is used for non-conforming storage? Mr. Jensen stated the land use permits and proper business license would be a good way to start; however, Mr.

Sesko has neither of those permits or records. Mr. Sesko stated he did go to City Hall trying to find out about the coal gassification plant, however, he was told business licenses are only kept for three years. There is no way to go back and establish the history of business licenses. He felt everyone was aware that Lentz is an established business in that area. He emphasized the change in ownership of a piece of property does not take away the non-conforming status. He believes his property is a "storage yard" and admits it is a little bit messy. Again, he referenced the condition of the City's property being used for storage next to Evergreen Park.

Mr. Winters pointed out Mr. Jensen stated Mr. Sesko had never obtained a Building Permit or any type of business license, yet he passed around a Building Permit Application that shows no approval as of October 1994. He asked Mr. Sesko why he showed that permit to the Council if it had no significance other than his applying? Mr. Sesko stated he was requesting a permit to repair the bulkhead, which would have been an improvement to the property. That permit would not be used to establish a business, the property is being used for storage. If someone leases out a warehouse to be used for storage there is no requirement for a business license. Mr. Winters asked Mr. Sesko if he received a letter of denial from the City? Mr. Sesko pointed out the last page contained their comments. Mr. Winters noted that the page referenced contained no names of City Officials. Mr. Winters asked Mr. Sesko if he owned the subject site and if so, the year it was purchased? Mr. Sesko stated the earnest money went through about three years ago followed by a closing of the sale six months later. the documentation he provided showed he was leasing the site in 1990.

Mr. Farr stated for practical purposes things that are really objectionable to the neighbors, he would assume, are the broken vehicles, old buses and old storage tanks. He asked if Mr. Sesko brought in any of those items? Mr. Sesko stated the bus was brought in at the time he was renting the site for storage. The windows on the bus were subsequently broken by vandals. At this point, he feels it is damaged beyond repair and he does intend to have it removed. Mr. Farr stated he would hate to discourage him from his clean up efforts as long as he went about the process in the legal form. He is the Council representative for that area and the City has received complaints on the way it appears. He felt it was hard to say it didn't meet the definition of a junkyard when there are junky vehicles parked there. Mr. Sesko stated no one had told him there was a problem prior to his receiving the CEASE and DESIST ORDER. Mr. Farr asked if Mr. Sesko brought in the rusty tanks on the upland area from the beach? Mr. Sesko explained those items are pontoons used for torpedo netting and they were being used at the Brownsville Marine as a breakwater. He estimated the



worth of those pontoons at approximately \$3,000 each.

Mr. Overson asked if Mr. Sesko brought in the boats and the house on to the property? Mr. Sesko stated there are two boats on site and he did bring in a mobile modular office building. Mr. Overson asked Mr. Sesko how he made an income. Mr. Sesko stated right now he is depending on his property. Mr. Overson asked if he was selling materials off his property? Mr. Sesko stated no. Mr. Overson challenged him to have his site as clean as the City will have its area near Evergreen Park by the time the City is finished with its project. He noted some of the documentation passed to Council were dated June 22, and the presentation to the Planning Commission was April 18, so Mr. Sesko definitely presented information that was not presented to the Planning Commission. Mr. Sesko pointed out that was part of his discovery.

Mr. Law asked if Mr. Sesko had any method to be sure that no one can get on the property and occupy or have the exposure of misdeeds in the building or other areas? Mr. Sesko stated the building is secured and the windows have a metal grating over them so no one can gain entry. Mr. Law asked if there were any structures on site that people could use? Mr. Sesko stated there are two small storage sheds that are kept locked. He noted there is a garage building on the back of a truck, however, it is not enclosed. Mr. Law asked if Mr. Sesko was absolutely sure that someone could not be dragged into one of those structures? He emphasized this is a concern to everyone. Mr. Sesko stated all of his structures are locked except for the garage on the truck, which is completely open.

Mr. Neville asked if Mr. Sesko was aware of the long term planning for his area? Mr. Sesko stated yes, and that the area closest to the water would be Business Park and the upper area will be multi-family residential. Mr. Neville asked Mr. Sesko if he participated in any of the discussion during the planning process for the Campus Evergreen Plan? Mr. Sesko stated he did attend several of those planning sessions. Mr. Neville noted Mr. Sesko stated he wanted to be grandfathered into the industrial zoning. Mr. Sesko stated that would be interim storage and any plans for a permanent use of the property would be compatible with the Business Park zone. Mr. Neville asked if Mr. Sesko had tried to coordinate any of his plans, such as removal of vehicles, with the City's effort to clean up and the special offer by Chico Towing to remove junk vehicles without a charge? Mr. Sesko explained the two boats are physically in the way of the two vehicles and as soon as he moves the boats he can dispose of the vehicles. He has concentrated on cleaning up the waterfront area, which he feels is most important. Mr. Neville asked if Mr. Sesko had a definite date when his clean up effort on the site will be done, or is he proceeding as money

allows? Mr. Sesko stated the clean up was his major concern until he received the stop order. Mr. Neville asked if Mr. Sesko had a definite goal in mind, such as by the year 2000, having the shoreline cleaned up and most of the rubble removed. Mr. Sesko stated his intent was to have the clean up done, however, the City has action against two other pieces of his property, which places him in a legal problem and he would like to work with the City rather than fight it legally.

Mr. Winters asked Mr. Sesko if the pier sitting out in the water was in place when he began leasing the property and if so, why wouldn't it have been one of the first things to be removed? Mr. Sesko explained he did not own the beach and was only renting the upland property. The pier belongs to the Wilkinson's Oil Company. Mr. Winters asked if Wilkinson Oil Company had been asked to remove the pier? Mr. Sesko explained they removed the pipelines from the pier. He further explained the tidelands are owned by the State and Wilkinson Oil leases those tidelands from the State for approximately \$1,200 per year for the pier. He is in negotiations to take that over from Wilkinson's fuel distribution company.

Mr. Overson questioned if he understood correctly that it is the City's intent to have the property cleaned up. Mr. Jensen stated yes. Mr. Overson pointed out Mr. Sesko stated that is also his intent, so by upholding the Planning Commission's decision and upholding the CEASE and DESIST Order it will actually help Mr. Sesko's intent to clean it up and the City encourages that clean up process. Mr. Jensen stated Mr. Overson is correct, the City issued the order in February and it was to be complied with 2-3 weeks later, if an appeal was not filed. If Council upholds the order and Mr. Sesko does not comply within 30 days, he would be cited for a gross misdemeanor violation.

Mr. Law asked Mr. Sesko when would he have his property cleaned up with out the CEASE and DESIST ORDER? Mr. Sesko stated the question is he doesn't think the building constitutes junk and is legal storage as well as the boats. Cleaning up the junk around the property would make it look 100% better and satisfy the City, which he was in the process of doing when the City stopped him. He emphasized nothing was hauled in. And, if the City's position is upheld, he will be required to remove everything off the property.

Mr. Winters stated in his earlier questioning about the pier, he made an error and was actually talking about the rusted out breakwater float. He asked Mr. Sesko if he brought that in after he acquired the property? Mr. Sesko stated yes, about three years ago. Part of the float that was on the beach has been removed and the existing section was to be reduced down to one third and remodeled for use as part of a marina.

TAPE #1298  
City Council Reg. Mtg. Minutes  
June 28, 1995  
Page 19 of 19

President Huff-Menees stated she was concerned, after seeing the photographs and listening to comments this evening, that there still seems to be a discrepancy between what the City considers to be clean up and what they consider to be junk and what Mr. Sesko considers to be clean up and junk. Hopefully, he could recognize that people looking at his property and what is there, the contaminated soil aside, such as old vehicles, old rusty barges, rusty pontoon, etc., do look like a junk yard. She could take photographs of a junkyard that would look very similar to the way his property looks today. But, when asked about clean up, he talks about the work he had done on the shoreline and the work he has done in terms on the contamination, which troubles her.


Mr. Sesko stated he set his priorities and felt the beach was more important because there was actual leaching into the water as well as a lot of metal pieces that had been dumped over the bank. The City stopped him from using his crane for the past three months, so his hands are tied to continue that effort. He talked with the Department of Fisheries about taking the barge apart and reassembling it and they have him a timetable to carry out that work, however, with the stop order on the crane his hands are tied.

Mr. Law stated he had the feeling that no matter how much time Mr. Sesko was given it would not be enough time.

#0941 M/S/C/U(Law/Farr) to UPHOLD the Planning Commission's decision to uphold the CEASE and DESIST ORDER, and hereby recognize the property at 1701 Pennsylvania Avenue as being used as a "Junkyard", which is an illegal land use in the "Business Park" (BP) zone.

With no further business meeting adjourned at 8:10 P.M.

  
KATHLEEN L. MCCLUSKEY, City Clerk

  
SHERRIL HUFF-MENEES, Council President  
City of Bremerton  
KLM/SH-M/me  
cc: Normal Distribution  
File/Vault

STATE OF WASHINGTON }  
COUNTY OF KITSAP } ss  
The Above and foregoing is Hereby Certified  
to be a true and correct copy of:  
City Council Minutes -  
June 28, 1995  
City Clerk: [Signature]  
Date: 13-1998